

## 2023 FAMILY DECISIONS (Jan. 1 to June 30, 2023)

### ARTICLE 3 – JDs

*Matter of Omar G.*

212 AD3d 615

(2d Dept) (1/17/23 DOI)

In JD proceeding, vacatur of respondent's adjudication as to 2<sup>nd</sup> degree CPW and remittal for a new hearing. Error to admit a video of police questioning the respondent's mother as excited utterances. Those statements were not spontaneous but were made in narrative form and after sufficient time had passed to render the mother capable of engaging in reasoned reflection.

[Matter of Omar G. \(2023 NY Slip Op 00085\)](#)

### ARTICLE 4 – Child Support

*Matter of Morgan v Morgan*

213 AD3d 669

(2d Dept) (2/6/23 DOI)

Affirmance of order suspending the father's child support obligation based on parental alienation. The mother deliberately and unjustifiably frustrated the father's visitation rights.

[Matter of Morgan v Morgan \(2023 NY Slip Op 00424\)](#)

*Matter of Proechel v Bensman*

213 AD3d 1009

(3d Dept) (2/6/23 DOI)

Appeal dismissed. Only an aggrieved party has standing to appeal. Further, the mother's challenges to the Support Magistrate's order were precluded by her failure to file objections.

[Matter of Proechel v Bensman \(2023 NY Slip Op 00467\)](#)

*Matter of Glaudin v Glaudin*

213 AD3d 762

(2d Dept) (2/14/23 DOI)

Modified. During a support hearing, the father testified without contradiction that he paid mortgage and utility bills for the house where mother and child resided. Failure to award him credit for those expenses resulted in double shelter payments.

[Matter of Glaudin v Glaudin \(2023 NY Slip Op 00662\)](#)

*Matter of Susan W. v Darren K.*

213 AD3d 593

(1st Dept) (2/27/23 DOI)

Modified and remanded. The Support Magistrate included an additional six months of child support without evidence of nonpayment. The Magistrate's and Family Court's calculations of arrears differed.

[Matter of Susan W. v Darren K. \(2023 NY Slip 00972\)](#)

*Matter of Kenneth H. v Dawn P.*

214 AD3d 731

(2d Dept) (3/13/23 DOI)

Reversal of order terminating father's support obligation based on constructive emancipation. He did not establish that the child actively abandoned him without justification. Instead, the father's conduct was the primary cause of the breakdown in the relationship.

[Matter of Kenneth H. v Dawn P. \(2023 NY Slip Op 01191\)](#)

*Matter of Lew v Lew*

214 AD3d 732

(2d Dept) (3/13/23 DOI)

Error to dismiss with prejudice the father's petition seeking to suspend his basic child support obligation based on parental alienation. The court had continued jurisdiction to modify, set aside, or vacate the prior support order pursuant to FCA 451.

[Matter of Lew v Lew \(2023 NY Slip Op 01192\)](#)

*Matter of Dawson v Iskhakov*

2023 NY Slip Op 02660

(2d Dept) (5/22/23 DOI)

Affirmance of order dismissing the mother's petition for child support. The court lacked subject matter jurisdiction where the petition sought to establish a child support order, not modify the existing order from a divorce judgment.

[Matter of Dawson v Iskhakov \(2023 NY Slip Op 02660\)](#)

## **ARTICLE 6 – Custody / Visitation**

### **Affirmed**

*Matter of Brandon HH. v Megan GG.*

214 AD3d 1036

(3d Dept) (3/6/23 DOI)

Affirmance of order granting the father's custody modification petition. An FCA § 1034 report stated that the mother allowed her boyfriend to have continued contact with the children after an alleged act of sexual misconduct between him and the daughter. Family Court erred by drawing an adverse inference against the mother for not calling her boyfriend as a witness. But the error was harmless.

[Matter of Brandon HH. v Megan GG. \(2023 NY Slip Op 01115\)](#)

*Matter of Agustin F. v Stephanie F.*

214 AD3d 450

(1st Dept) (3/13/23 DOI)

Affirmance of order denying the mother's motion to suspend the father's visits. Although the order was not appealable as of right, the First Department treated the notice of appeal as an application for leave to appeal and granted it nunc pro tunc. The record supported the challenged order.

[Matter of Agustin F. v Stephanie F. \(2023 NY Slip Op 01233\)](#)

## **Dismissed**

*M/O Donald OO. v Tiffany OO.*

212 AD3d 951

(3d Dept) (1/17/23 DOI)

Dismissal. Appeal from order that granted AFC's motion directing production of the children for a meeting with the AFC, pending a hearing on the custody petition. There was no appeal as of right from such a non-dispositional order (*see* FCA § 1112 [a]).

[Matter of Donald OO. \(2023 NY Slip Op 00131\)](#)

## **Reversed / modified**

*Matter of Michael Y.*

212 AD3d 493

(1st Dept) (1/23/23 DOI)

Reversal and remand for in camera documents. In an Article 6 proceeding, the father alleged that the mother had made numerous false reports of abuse or neglect against him. Family Court issued a subpoena directing ACS to produce "complete" investigation notes and unfounded reports, but ACS produced only redacted documents. No determination was made to justify the redactions.

[Matter of Michael Y. \(2023 NY Slip Op 00193\)](#)

*Matter of Harvey P. v Contrena Q.*

212 AD3d 1023

(3d Dept) (1/23/23 DOI)

Error to dismiss custody modification petition. Hearing proof established that the father was not abiding by terms of the prior order. While that order required visits in a public place, many visits occurred in private locations. Further, there was testimony that the father used drugs during visits. Such facts constituted a change in circumstances.

[Matter of Harvey P. v Cotrena Q. \(2023 NY Slip Op 00257\)](#)

*Matter of Sharlow v Hughes*

212 AD3d 1200

(4th Dept) (2/6/23 DOI)

Order modified by striking the preconditions for mother's therapeutic visitation. While a court may include specific directives as a component of visitation, it does not have the authority to make them a prerequisite to visitation.

[Matter of Sharlow v Hughes \(2023 NY Slip Op 00518\)](#)

*Matter of Parascondola v Romano*

212 AD3d 768

(2d Dept) (2/14/23 DOI)

Family Court erred in prohibiting the father from filing any petitions, writs, or motions without counsel's review and prior court approval. Nothing demonstrated that father had engaged in vexatious litigation or filed petitions out of ill will or spite.

[Matter of Parascondola v Romano \(2023 NY Slip Op 00666\)](#)

*Matter of Ianello v Colonomos*

212 AD3d 1301

(4th Dept) (2/14/23 DOI)

Reversed. Family Court failed to make any factual findings supporting the physical custody award to the mother.

[Matter of Ianello v Colonomos \(2023 NY Slip Op 00767\)](#)

*Matter of Bonilla-Wright v Wright*

212 AD3d 1289

(4th Dept) (2/14/23 DOI)

Vacatur of provisions that made participation in therapeutic counseling a prerequisite to the resumption of the father's unsupervised overnight weekend visitation. A court may order counseling as a component of custody or visitation but may not make it a prerequisite.

[Matter of Bonilla-Wright v Wright \(2023 NY Slip Op 00756\)](#)

*Matter of Dysko v Dysko*

213 AD3d 847 and 848

(2d Dept) (2/21/23 DOI)

Reversed. Family Court failed to inquire into the best interests of the children and relied on "adequate relevant information" instead of admissible evidence.

[Matter of Dysko v Dysko \(2023 NY Slip Op 00863\)](#)

[Matter of Dysko v Dysko \(2023 NY Slip Op 00864\)](#)

*Matter of Badal v Wilkinson*

213 AD3d 926

(2d Dept) (2/27/23 DOI)

Reversed and remanded for new hearing. Denial of the mother's request for in-person visitation with the child in the country where she resided was not supported by the record. Family Court should have conducted an in camera interview of the child to assess mother's claim that his fear of visiting her in person was due to outside influences.

[Matter of Badal v Wilkinson \(2023 NY Slip 00997\)](#)

*Matter of Patrick UU. v Francesca VV.*

213 AD3d 1188

(3d Dept) (2/27/23 DOI)

Order granting mother's motion to resettle a custody order modified. A paragraph of the order should have been stricken since the parties did not agree to that term in their oral stipulation.

[Matter of Patrick UU. v Francesca VV. \(2023 NU Slip Op 01040\)](#)

*Matter of Ryan Z. v Adrienne AA.*

213 AD3d 1161

(3d Dept) (2/27/23 DOI)

Reversal and remittal. In considering the AFC's motion to dismiss the father's petition, Family Court should have considered the facts alleged to be true. Instead, the court improperly relied on counsel's unsworn information and dismissed the petition without a hearing.

[Matter of Ryan Z. v Adrienne AA. \(2023 NY Slip Op 01032\)](#)

*Matter of Cywiak v Packman*

214 AD3d 654

(2d Dept) (3/6/23 DOI)

Modified and remitted. The record did not support reduction of the father's visitation time. Family Court should have modified the visitation schedule to account for holidays and school breaks, since the so-ordered stipulation was entered when the subject children were preschoolers.

[Matter of Cywiak v Packman \(2023 NY Slip Op 01089\)](#)

*Matter of McCabe v Truglio*

214 AD3d 811

(2d Dept) (3/20/23 DOI)

Reversed and remanded. In summarily dismissing mother's petition to modify visitation, Family Court erred by relying on the report of a forensic evaluator that had not been admitted. The parties did not have the chance to test the evaluator's opinions and credibility.

[Matter of McCabe v Truglio \(2023 NY Slip Op 01299\)](#)

*Matter of Bendter v Elikwu*

214 AD3d 972

(2d Dept) (4/3/23 DOI)

Reversed and remanded. Error to decide custody without conducting a hearing or an inquiry into the best interests of the child.

[Matter of Bendter v Elikwu \(2023 NY Slip Op 01670\)](#)

*Matter of Alda X. v Aurel X.*

215 AD3d 1029

(3d Dept) (4/10/23 DOI)

Reversed and remanded. The initial custody order was issued by a New Jersey court which retained jurisdiction because the father continued to live there. Family Court did not have jurisdiction to modify the NJ order. Nothing showed that NJ relinquished jurisdiction.

[Matter of Alda X. v Aurel X. \(2023 NY Slip Op 01826\)](#)

*Matter of Baez-Delgadillo v Moya*

215 AD3d 829

(2d Dept) (4/24/23 DOI)

Order granting mother's petition for sole custody and suspending father's parental access reversed and remitted for a best interests hearing. Family Court erred in ruling without a hearing. It was also improper to condition the father's future parental access on his compliance with treatment.

[Matter of Baez-Delgadillo v Moya \(2023 NY Slip Op 01994\)](#)

*Matter of Coley v Steiz*

215 AD3d 830

(2d Dept) (4/24/23 DOI)

Reversal and remittal. Challenged order conditioned the father's filing of future petitions on his completion of parenting classes. That was error. A court may direct a party to submit to counseling or treatment as a component of parental access or custody, but it cannot require such services as a condition of filing petitions.

[Matter of Coley v Steiz \(2023 NY Slip Op 01995\)](#)

*Matter of Cook v Perez*

215 AD3d 960

(2d Dept) (5/1/23 DOI)

Family Court order modified by vacating the provision awarding the father final decision-making authority over the children's medical issues. He did not demonstrate a change in circumstances.

[Matter of Cook v Perez \(2023 NY Slip Op 02122\)](#)

*Crofoot v Crofoot*

215 AD3d 1238

(4th Dept) (5/1/23 DOI)

The obvious hostility between the parents rendered joint custody inappropriate. Thus, the challenged order was modified to award sole custody to the mother.

[Crofoot v Crofoot \(2023 NY Slip Op 02205\)](#)

*Matter of Laura E. v John D.*

216 AD3d 1274

(3d Dept) (5/15/23 DOI)

Parenting time provision of the order reversed and matter remittal. Family Court improperly delegated its authority by allowing the mother to retain discretion over whether the father's future parenting time required supervision.

[Matter of Laura E. v John D. \(2023 NY Slip Op 02568\)](#)

*Matter of Liang v O'Brien*

216 AD3d 1101

(2d Dept) (5/30/23 DOI)

Error to summarily dismiss the mother's petition for modification. Allegations demonstrating that the parents could no longer communicate civilly about the children were sufficient to show a change in circumstances.

[Matter of Liang v O'Brien \(2023 NY Slip Op 02789\)](#)

*Matter of Amber GG. v Eric HH.*

2023 NY Slip Op 03059

(3d Dept) (6/12/23 DOI)

Denial of mother's modification/relocation petition was not supported by a sound and substantial basis in the record. She was the more involved caregiver, and the children's lives would be enhanced by the relocation. They wanted to move, and the mother was willing to facilitate significant visitation with the father.

[Matter of Amber GG. v Eric HH. \(2023 NY Slip Op 03059\)](#)

*M/O Samantha WW. v Malek XX.*

2023 NY Slip O 03052

(3d Dept) (6/12/23 DOI)

Family Court abused its discretion in declining to hold a *Lincoln* hearing after the close of proof in a modification/relocation petition hearing. The wishes of the soon-to-be 16-year-old child, although not determinative, should have been considered.

[Matter of Samantha WW. v Malek XX. \(2023 NY Slip Op 03052\)](#)

## UCCJEA

*Matter of Waters v Yacopino*

216 AD3d 1105

(2d Dept) (5/30/23 DOI)

Order dismissing father's petition based on forum non conveniens reversed and remitted. Although Family Court correctly found that Texas was the more convenient forum, DRL § 76-f (3) requires the court to stay the proceedings until a custody proceeding is commenced in the other state before declining to exercise jurisdiction.

[Matter of Waters v Yacopino \(2023 NY Slip Op 02792\)](#)

## **ARTICLE 8 – Family Offenses**

*Linda UU. v Dana VV.*

212 AD3d 906

(3d Dept) (1/9/23 DOI)

Affirmance of dismissal of grandmother's family offense petition against the mother. Dissent: A Head Start employee saw an argument between the mother and grandmother and observed other people reacting to the mother's yelling and swearing. She recklessly created a risk that public safety, peace, or order would be disrupted.

[Linda UU. v Dana VV. \(2023 NY Slip Op 00013\)](#)

*Gloria B. v Rachelle B.T.*

212 AD3d 452

(1st Dept) (1/17/23 DOI)

Two-year order of protection extended. The respondent's repeated harassment of the petitioner in violation of a final order of protection constituted aggravating circumstances warranting extending the duration.

[Matter of Gloria B. v Rachelle B.T. \(2023 NY Slip Op 00148\)](#)

*Matter of Bailey v Bailey*

213 AD3d 1329

(4th Dept) (2/14/23 DOI)

Vacatur of language in challenged order stating that it was entered upon the father's default. Although he did not appear in court, he did not default because he was represented by counsel, who was present.

[Matter of Bailey v Bailey \(2023 NY Slip Op 00780\)](#)

*Matter of Eno v Illovisky*

214 AD3d 865

(2d Dept) (3/27/23 DOI)

Error to dismiss family offense petition after a familial death terminated the parties "relationship of affinity." The parties still had an "intimate relationship" because they had known each other for 30 years, were close as sisters-in-law, lived about one mile apart, and had often joined family activities together.

[Matter of Eno v Illovisky \(2023 NY Slip Op 01506\)](#)

*Matter of McCaslin v Beck*

214 AD3d 1450

(4th Dept) (3/27/23 DOI)

Reversal, petition dismissed. Petitioner's testimony that respondent verbally degraded her was insufficient to establish that respondent committed harassment.

[Matter of McCaslin v Beck \(2023 NY Slip Op 01620\)](#)

*Matter of Johnson v Lomax*

214 AD3d 980

(2d Dept) (4/3/23 DOI)

Error to vacate a temporary order of protection and direct that the family offense petition be withdrawn without the stipulation of all parties.

[Matter of Johnson v Lomax \(2023 NY Slip Op 01675\)](#)

*Matter of Sealy v Peart*

215 AD3d 971

(2d Dept) (5/1/23 DOI)

Appeal held in abeyance and matter remitted. Family Court did not set forth the factual findings essential to its decision to allow for independent appellate review. There were no findings regarding the credibility of the parties, who presented sharply conflicting allegations.

[Matter of Sealy v Peart \(2023 NY Slip Op 02128\)](#)

*Matter of Awawdeh v Awawdeh*

2023 NY Slip Op 03062

(3d Dept) (6/12/23 DOI)

Affirmed, despite parties' having a divorce proceeding pending in another county. The one-family-one judge rule speaks to the assignment of cases within a court, not whether venue of a proceeding is proper. Such rule applies to the extent feasible and appropriate.

[Matter of Awawdeh v Awawdeh \(2023 NY Slip Op 03062\)](#)

## **ARTICLE 10 – Abuse & Neglect**

### **Affirmed**

*Matter of Juliet W. (Amy W.)*

216 AD3d 1424

(4th Dept) (5/8/23 DOI)

Affirmance of order finding derivative neglect by the mother. Earlier orders terminating her parental rights were so recent that it could be assumed that the conditions still existed.

[Matter of Juliet W. \(Amy W.\) \(2023 NY Slip Op 02417\)](#)

*Matter of Erica H.-J. (Tarel H.)*

216 AD3d 954

(2d Dept) (5/22/23 DOI)

Affirmance of finding of abuse against father and his girlfriend based on res ipsa loquitur. Dissent: Evidence against the girlfriend did not establish that she exercised the degree of control and



involvement in the child's life to warrant such a determination. She had only met the child two or three times.

[Matter of Erica H.-J. \(Tarel H.\) \(2023 NY Slip Op 02662\)](#)

**Reversed / modified**

*Matter of Nathaniel H.*

213 AD3d 525

(1st Dept) (2/21/23 DOI)

Family Court erred when, without holding a hearing, it relinquished temporary jurisdiction upon learning that the father had commenced a custody petition in Texas. There was no evidence to support a finding that TX had home state or alternative jurisdiction, and there were no court orders there to safeguard the child.

[Matter of Nathaniel H. \(2023 NY Slip Op 00927\)](#)

*Matter of Leo RR. (Joshua RR.)*

213 AD3d 1190

(3d Dept) (2/27/23 DOI)

Reversal, petition dismissed. Record did not support finding that father neglected the child by failing to report mother's prenatal drug use to Probation where: (1) a warrant for her arrest was already in place; and (2) the father did not have information needed to help find her.

[Matter of Leo RR. \(Joshua RR.\) \(2023 NY Slip Op 01041\)](#)

*Matter of C.L. (Edward L.)*

214 AD3d 481

(1st Dept) (3/20/23 DOI)

Finding of derivative neglect of an older child was vacated because it was based entirely on excessive corporal punishment of a younger child. There was no proof that the older child was aware that the incident occurred or had ever been similarly mistreated.

[Matter of C.L. \(Edward L.\) \(2023 NY Slip Op 01260\)](#)

*Matter of Alachi I. (Shelby J.)*

215 AD3d 1014

(3d Dept) (4/10/23 DOI)

Reversal, petition dismissed. DSS failed to establish that the children's health was impaired or in imminent danger of being impaired or that the mother failed to exercise a minimum degree of care. Any parent would have struggled in her situation, living in a homeless shelter with three young children after fleeing from an abusive relationship.

[Matter of Alachi I. \(Shelby J.\) \(2023 NY Slip Op 01822\)](#)

*Matter of Elijah AA. (Alexander AA.)*

216 AD3d 1372

(3d Dept) (5/30/23 DOI)

Order finding that the father neglected his newborn child reversed. Paternity was not established until the child was one. DSS proof of neglect was impermissibly predicated solely on the father's incarceration.

[Matter of Elijah AA. \(Alexander AA.\) \(2023 NY Slip Op 02812\)](#)

## **OTHER PROCEEDINGS**

### **Adoption**

*Matter of Rosamae M. v Regina Cheyenne G.*

216 AD3d 1161

(2d Dept) (6/5/23 DOI)

Affirming orders dismissing custody petition by the child's relative and transferring custody and guardianship to a private agency and DSS for purpose of adoption. Social Services Law § 383 (3) gives preference for adoption to a foster parent who cared for the child in the preceding 12 months. Extended biological family members are given no special preference regarding custody.

[Matter of Rosamae M. v Regina Cheyenne G. \(2023 NY Slip Op 02878\)](#)

### **Divorce**

*Primero v Lee*

216 AD3d 1120

(2d Dept) (5/30/23 DOI)

Affirmance of order denying the wife's motion to (1) enjoin the forensic evaluator from requiring her to submit answers to a parenting survey or to allow her to consult with counsel; and (2) preclude the parties from seeking production of written responses to the survey. Neither the wife's statutory right to counsel nor her due process rights were violated. Even where counsel is permitted to attend a client's examination in a TPR proceeding, there is no right to the assistance of counsel.

[Primero v Lee \(2023 NY Slip Op 02801\)](#)

### **SIJS**

*Matter of Joel A.A.R. (Eddy A.A.G)*

216 AD3d 1167

(2d Dept) (6/5/23 DOI)

Reversal. SIJS law contains no express requirement for certified copies of birth certificates or any other evidence to establish the juvenile's age.

[Matter of Joel A.A.R. \(Eddy A.A.G.\) \(2023 NY Slip Op 02881\)](#)

*Matter of Jose S.S.G. (Norma C.G.C.)*

2023 NY Slip Op 03350

(2d Dept) (6/26/23 DOI)

Reversal. The children were special immigrants. Reunification with their father was not viable because he was deceased and a return to El Salvador would not be in their best interests.

[Matter of Jose S. S. G. \(Norma C. G. C.\) \(2023 NY Slip Op 03350\)](#)

*M/O Anuar S.A.O. (Yari C.B.M.—Lizeth O.M.)*

2023 NY Slip Op 03353

(2d Dept) (6/26/23 DOI)

Reversal and remand for an expedited hearing. There is no express requirement to submit certified copies of birth or death certificates in a FCA § 661 (a) proceeding. Family Court erred in not conducting a hearing or considering the child's best interests.

[Matter of Anuar S. A. O. \(Yari C. B. M.\) \(2023 NY Slip Op 03353\)](#)

## **TPR**

*Matter of Harmony F.*

212 AD3d 1028

(3d Dept) (1/23/23 DOI)

Family Court correctly found permanent neglect but erred in not holding a dispositional hearing without the consent of the parties (*see* FCA § 625 [a]). Remitted.

[Matter of Harmony F. \(2023 NY Slip Op 00259\)](#)

*Matter of Syri'annah PP.*

212 AD3d 1005

(3d Dept) (1/23/23 DOI)

TPR order reversed, petition dismissed. DSS failed to establish that the father abandoned his children by evincing an intent to forego his parental rights. He filed numerous motions to resume visitation and made many inquiries about the children. Further, the agency thwarted his visits.

[Matter of Syri'annah PP. \(2023 NY Slip Op 00252\)](#)

*Matter of Michael H. (Catherine I.)*

214 AD3d 84

(3d Dept) (3/6/23 DOI)

Reversal of denial of motion to modify order prohibiting anyone other than the AFC from discussing adoption or surrender with the child. Although the appeal was moot, exception applied. AFCs cannot prevent child protective agencies from fulfilling their obligation to communicate with the child about permanency planning.

[Matter of Michael H. \(Catherine I.\) \(2023 NY Slip Op 01119\)](#)

*Matter of Amari F. (Haley F.)*

2023 NY Slip Op 03047

(3d Dept) (6/12/23 DOI)

Pending the mother's appeal from the order granting the TPR petition, the child was adopted by her foster family of 10 years. Because the mother challenged only Family Court's choice among dispositions and not the underlying finding of permanent neglect, the appeal was moot.

[Matter of Amari F. \(Haley F.\) \(2023 NY Slip Op 03047\)](#)